



Comptroller General
of the United States

Washington, D.C. 20548

Cunningham

Decision

Matter of: Ingenieria y Construcciones Omega--
Request for Reconsideration
File: B-237430.2
Date: December 21, 1989

DIGEST

"Good cause" and "significant issue" exceptions to General Accounting Office's Bid Protest Regulations' timeliness requirements do not apply to request by Panamanian concern for reconsideration of protest dismissed as untimely filed because: (1) good cause exception does not apply to facts surrounding protester's method of transmitting protest or to date protester chose to transmit protest; and (2) significant issue exception does not apply to consideration of non-responsibility determination involving protester's prior performance since issue is not a novel one of widespread interest to the procurement community.

DECISION

Ingenieria y Construcciones Omega has requested reconsideration of our October 17, 1989, dismissal of the company's protest against the rejection of its low bid under invitation for bids (IFB) No. CC-89-57, issued by the Panama Canal Commission.

We deny the request for reconsideration.

The Commission rejected Omega's low bid after it found the company to be nonresponsible based on a review of the company's prior contract performance. The rejection of Omega's bid and the nonresponsibility finding were communicated to Omega in a September 25, 1989, letter which the company says it received on that date. In its protest to our Office dated October 4 and received October 13, Omega generally argued that its prior contract performance had been satisfactory and that this performance could not reasonably justify the nonresponsibility finding against the company.

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We dismissed the company's protest as untimely filed under our Bid Protest Regulations (4 C.F.R. Part 21 (1989)) because the protest was filed more than 10 working days after Omega received the Commission's September 25 letter, which conveyed the basis of Omega's present protest. See 4 C.F.R. § 21.2(a)(2), which provides that protests involving other than solicitation defects are to be filed not more than 10 working days after the basis of protest was known or should have been known.

Our timeliness rules reflect the dual requirements of giving parties a fair opportunity to present their cases and resolving protests expeditiously without unduly disrupting or delaying the procurement process. Advanced Health Sys.--Reconsideration, B-227779.2, Aug. 27, 1987, 87-2 CPD ¶ 205. In order to prevent those rules from becoming meaningless, exceptions are strictly construed and rarely used. Id. The only exceptions to our Regulations' timeliness requirements are where there was good cause for the untimely filing (some compelling reason beyond the protester's control prevented the protester from filing a timely protest) or a significant issue (one that has not been considered before and that is of widespread importance) is involved. See 4 C.F.R. § 21.2(b).

Omega argues that we should reconsider our dismissal of its protest under both of these exceptions. As for the good cause exception, Omega argues that it "did everything in its power to file [its protest] before October 10, 1989 [the last day for a timely filing of its present protest]" but that its protest was nevertheless received late at our Office. Specifically, Omega has forwarded a copy of its courier service receipt which indicates that Omega's protest was given to the courier for shipment on October 4. Our date stamp, however, shows the protest was received on October 13.

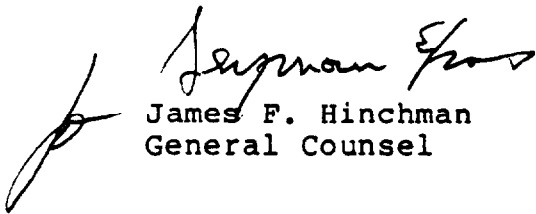
The term "filed" under our Regulations means receipt of the protest and other submissions at our Office, 4 C.F.R. § 21.0(g) (1989). Therefore, neither the date of transmission of a protest nor the method used to transmit a protest is relevant to considerations of timeliness since the protester uses a particular method of transmission, and chooses a date for transmission, at its own risk. Cf. The Richard-Rogers Group, Inc.--Request for Reconsideration, B-234141.6, Feb. 22, 1989, 89-1 CPD ¶ 194, where we held that a protester makes use of the mails, including certified mail, at its own risk. Since in its request for reconsideration Omega has not shown that some compelling reason beyond its control prevented the timely filing of its

protest, we may not consider Omega's protest under the good cause exception.

As to the application of the significant issue exception, we generally consider issues not to be significant where the general legal principles are well-established and our ruling would be limited to the facts of that particular case and of primary interest only to the parties involved.

Although Omega argues that as a Panamanian concern which may not avail itself of the Small Business Administration's certificate of competency procedure the dismissal of its protest means that it will not otherwise be heard by any other forum, we regard that as irrelevant to the question of whether we should consider Omega's untimely protest under the significant issue exception. Since our consideration of this matter would not involve a novel issue and would be principally of concern only to the protester, we do not think it appropriate to invoke the significant issue exception.

Consequently, we deny the request for reconsideration.



James F. Hinchman
General Counsel